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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/813,023	03/21/2001	Junji Seki	1095.1176	2740

21171 7590 02/01/2006

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EXAMINER

GARG, YOGESH C

ART UNIT PAPER NUMBER

3625

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/813,023

Applicant(s)

SEKI ET AL.

Examiner

Yogesh C. Garg

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,5-7,11,12,14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-7,11-12,14 & 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The applicant's amendment received on 11/15/2005 is acknowledged and entered. Claims 1, 7, 12 and 14 have been amended and new claim 15 is added. Currently claims 1, 5-7, 11-12, 14 and 15 are pending for examination.

### ***Response to Arguments***

2.1. Applicant's arguments (see Remarks, pages 5-7) with respect to rejection of currently amended claims 1, 5-7, 11-12, 14 and newly added claim 15 under 35 U.S.C. 103 (a) have been considered but are not persuasive because the prior art of Rose/Liebermann/Saigo discloses the currently amended limitations of claims 1, 5-7, 11-12, 14 and 15 as in the earlier Office action mailed on 7/15/2005.

2.1. The applicant argues that Rose fails to include "try-on-reservation". In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case the claims have been rejected as being unpatentable over Rose in view of Liebermann and therefore applicant's argument against Rose only are not sufficient to show unobviousness.

2.2. The applicant further argues that the present invention includes “try-on-reservation” for a customer who wants to visit a store to purchase garments is not required to go through selecting the garment at the store because the garment will be readily differentiated from other commodities at the store based on the reservation and this also enables a provider or a retailer to make an intelligent decision regarding a merchandise such as space used to display the merchandise, reducing disused inventory, etc. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., “try-on-reservation” for a customer who wants to visit a store to purchase garments is not required to go through selecting the garment at the store because the garment will be readily differentiated from other commodities at the store based on the reservation and this also enables a provider or a retailer to make an intelligent decision regarding a merchandise such as space used to display the merchandise, reducing disused inventory, etc.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

2.3. The applicant argues that Liebermann discusses measurements that must be constructed at a tailor's location where a customer is required to visit the tailor at least twice before the customer expects to receive a finished garment. In response to applicant's argument, as stated above, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art

Art Unit: 3625

cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). As, submitted in the earlier Office action mailed on 7/15, 2005, see pages 3-7, it is obvious in view of Liebermann to a person of an ordinary skill in the art to incorporate the well-known traditional feature of making try-on reservations in a store selling the commodity because that would ensure very fastidious customers, who may have some doubts about the fitting of garments with the virtual try-on process conducted via computerized simulation, to receive garments fit as per their liking. Some people might prefer one more try-on even after making selection and ordering the garment via simulated electronic process as shown in Rose. For-example, at the start of electronic commerce many consumers would prefer to surf on-line in making selections but preferred to make purchase transactions by visiting the brick-mortar stores as they were not comfortable in using credit cards online. Therefore, the option of making try-on reservation in a store selling that commodity does not qualify to the standards of novelty and patentability.

2.4. The applicant argues that Saigo is limited to arbitrarily providing eyeglasses from among stored eyeglasses data for selection by the customer. In response to applicant's argument, as stated above, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). As, submitted in the earlier Office action mailed on 7/15, 2005, see pages 7-8, it is obvious in view of Saigo to a person of an ordinary skill in the art to incorporate the

feature of outputting the record related to the sale transaction including a customer information number, which corresponds to an identification number of the sales transaction. Doing so would help the consumer to use this copy of record as a receipt of the purchase order and present to the store to enable them retrieve the consumer's details and hand over the ordered garment for try-on.

2.5. The applicant further argues that the cited prior art of Rose/Liebermann/Saigo does not teach, alone or in combination, the features of "making on try-on reservation, generating an object image information based on customer information including at least one of data related to height, weight, body type and favorite fashion of a user where the commodity is presented based on at least said favorite fashion of said customer information. This is a mere conclusive statement by the applicant. The examiner respectfully does not agree with this conclusive statement. As per MPEP guidelines 714.02, the reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. In this case, the applicant has not distinctly pointed out any errors in the rejections/interpretations made by the examiner in the previous office action, see pages 4-8.

2.6. In view of the foregoing, the rejection of all claims is sustainable. It is a Final rejection.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "transmitting the try-on reservation" in line 5 on claim 15. It is not clear if the event of try-on reservation is being transmitted or it is the information about try-on reservation is being transmitted and therefore owing to this ambiguity the claim is rendered unclear and indefinite. As best understood, the examiner interprets the limitation "transmitting the try-on reservation" as transmitting information about try-on reservation for further treating the claim 15 on merits.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

Art Unit: 3625

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4.1. Claims 1, 5, 7 and 11-12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose (US Patent 5,930,769) in view of Liebermann (US Patent 6,415,199).

Note: Examiner cites particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Regarding claim 1, Rose teaches a sales transaction support method for supporting a sale of a commodity (see col.2, line 63-col.3, line 17. Note: In Rose, the commodity is fashion related.), comprising:

presenting said commodity, providing a try-on simulation image of an object virtually wearing said commodity by using commodity image information of an image of said commodity presented and object image information of an image of said object, and executing a transaction process for said commodity (see at least col.6, line 43-col.7, line 27, " ..... The system may also provide an adaptive presentation of choices based on a determined



Art Unit: 3625

prioritization. Each database entry or fashion has corresponding fashion data. Fashion data allows presentation of a projection of a model having the customer's body type wearing the selected fashion, portrayed on the computer screen. .... ". Note: The projection of a model having the customer's body corresponds to the claimed object image, which virtually wears the selected fashion commodity).

Rose discloses registering customer information including at least one of data related to height, weight, body type and favorite fashion, and said object image information is generated based on said customer information and said commodity is presented based on said customer information including said favorite fashion and registered (see at least col.3, line 18-col.4, line 30,

".....The personal information which is entered into the computer system includes body measurements along with credit information, address, and other pertinent facts. The personal information is a permanent record in the database of the electronic fashion shopping system and redundant input is not needed the next time the customer accesses the system. .... **Turning to the figures, FIG. 1 shows a body frame illustrating the body measurements that must be inputted into the electronic fashion system before accessing the system. The body measurements include center front 2, arm length 4, bust 6, waist 8, hip 10, and height 12. ....** The customer may also submit a photograph of her face taken with a digital camera or alternatively submit a photograph that is digitized by the electronic fashion shopping service. It is preferable that multiple photographs of the face depicting the front view, side view, back view, etc. are submitted so that the system can accurately depict the face at different angles. ....**After the personal information is entered, the system determines a body type based on the body measurements. As determined by the system, body type is an individual's skeleton or bone frame plus an amount of flesh surrounding a specific anatomical part. .... Fashion is cloth or fabric constructed to a specific shape and size which determines style.** The amount of cloth and shape when cut, is placed on a specific skeletal frame and flesh area, which determines the fashion or look which is the result of the process. Not all shapes fit all frames, so not all styles fit all body types. While certain limitations are physical, e.g. a body too large for the clothing-line, some limitations are aesthetic, and must be determined as a matter of "taste". .... **The system for electronic fashion shopping is based on an expert system analysis of the personal information and available garments, and also recommends what shapes best compliment the customer's body type, as well as other fashion recommendations and information by Andrea Rose fashion consulting services.RTM. and any other designers.** The system thus provides a personalized "chart" characterizing the customer's body type. This chart may be a physical printed document or electronic representation. The chart also has information on the best designs to flatter her specific shape and suggestions on how to dress and shop effectively. ....In essence, the computer system acts like a fashion consultant, addressing specific clothing problems, informing the customer her size in the manufacturer's clothes, and determining if there is a fit problem whereby the customer is informed of alterations needed on the garment. ").

Further, Fig.5, col.8, line 58-col.9, line 13 teaches displaying a recommended commodity on a display device before the try-on simulation:

*" Turning now to FIG. 5, this shows analysis of fashion suggestions with designer do's and don'ts based on the customer's body type. The system will output suggestion fashion shapes for the customer's unique body type 50 and suggested fashion shapes to avoid wearing 52. .... Using the petite fashion category as an example, the system will output that boleros, cropped jackets and short, tailored jackets with small lapels and collars would work very well. In this case, the system also states that a petite should avoid long skirts, since the extra length will make the petite look smaller, and long garments cut the body and give the appearance of being shorter. The system will also output that when selecting prints, smaller is better since larger patterns tend to be overwhelming and will be proportionately awkward for the petite body. Vertical stripes are a good choice as they create the illusion of height. It is better to go with skinny stripes rather than bold stripes which run the risk of overpowering the petite woman. The system would also output that when accessorizing, it is important to avoid oversize pieces, and instead select narrow belts, scarves that are not too wide and smaller, more delicate jewelry. "*

Note: outputting/displaying fashion suggestions based upon the customer's information corresponds to recommending a commodity on a display device.

Rose discloses interacting and executing transaction related to selecting, try-on and purchasing fashion garments via a telecommunication network (see col.2, line 63-col.3, line 17) but does not disclose that the transaction process includes making a try-on reservation for trying on said commodity. The examiner notes that both the applicant's invention and Rose provide a computerized simulated fitting try-on session so that to make the selection of clothing/garments cost-effective to the sellers and convenient to the consumers by eliminating the need for the users to visit garment stores to select and try on the garments and for merchants to free the sales staff from being engaged in taking measurements of the consumers. Therefore, the option of providing a try-on reservation in store for the consumer appears to be redundant when the consumer can have a virtual feel and look of the fashion garment he is purchasing via simulation process disclosed in both Rose and the applicant's invention. Rose,

therefore, does not explicitly teach making a try-on reservation for trying said commodity at a store selling the commodity. However, Liebermann explicitly discloses, as an admitted prior art, that consumers visit tailors for try-on sessions to ensure right fitting (see at least col.1, lines 29-43, " ..... *Traditionally, a tailor works with a muslin pattern based on the original measurements and, through at least one iteration, i.e., the fitting, adjusts the measurements to account for freedom of movement. Thus, the customer must visit the tailor for at least two sets of measurements, the original set and the fitting, before he or she can expect to receive the finished garment.* " . ). In view of Liebermann, it would have been obvious to a person of an ordinary skill in the art to incorporate the well-known traditional feature of making try-on reservations in a store selling the commodity because that would ensure very fastidious customers, who may have some doubts about the fitting of garments with the virtual try-on process conducted via computerized simulation, to receive garments fit as per their liking. Some people might prefer one more try-on even after making selection and ordering the garment via simulated electronic process as shown in Rose. For-example, at the start of electronic commerce many consumers would prefer to surf on-line in making selections but preferred to make purchase transactions by visiting the brick-mortar stores as they were not comfortable in using credit cards online. Therefore, the option of making try-on reservation in a store selling that commodity does not qualify to the standards of novelty and patentability.

Regarding claim 5, Rose in view of Liebermann discloses that a sales transaction support method according to claim 1, wherein said presentation of said commodity, said providing of said try-on simulation image, and said execution of the transaction process

Art Unit: 3625

are performed via a telecommunication network (see at least col.3, lines 3-6, "*....The system is capable of being accessed remotely using telecommunication systems.....*").

Regarding claims 7, 11, 12 and 14, their limitations are closely parallel to the manipulative steps of claims 1 and 5 and are therefore analyzed and rejected as being unpatentable over Rose in view of Liebermann based on same rationale.

4.2. Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose (US Patent 5,930,769) in view of Liebermann (US Patent 6,415,199) and further in view of Saigo.

Regarding claim 6, Rose in view of Liebermann teaches a sales transaction support method including making a try-on reservation at a store selling the commodity, executing these transactions via a telecommunication network as analyzed and discussed in claim 1 above. Rose does not disclose that try-on reservation step issues a try-on reservation card having thereon an identification number for identifying said try-on reservation, when said try-on reservation for trying on said commodity is made. However, Saigo in the field of same endeavor, that is executing sales transactions involving a virtual try-on simulation process for a commodity like eyeglasses, teaches outputting a record of the sales transaction details (see at least FIG.26, "Record Output Confirmation" corresponds to the claimed card having an identification number in the form of "customer Information number" and all other relevant details and also see at least col.22, lines 15-38). In view of Saigo, it would have been obvious to one of

an ordinary skill in the art at the time of the applicant's invention to have modified Rose in view of Liebermann as applied to claim 1 to incorporate the feature of outputting the record related to the sale transaction including a customer information number, which corresponds to an identification number of the sales transaction. Doing so would help the consumer to use this copy of record as a receipt of the purchase order and present to the store to enable them retrieve the consumer's details and hand over the ordered garment for try-on.

Regarding claim 15, its limitations of providing a system, that is enabling a user to make try-on reservation for a commodity and to include a corresponding identifier for the commodity and executing a transaction with respect to the commodity based on the try-on reservation made are already covered in claims 1 and 6 above. As regards the limitation, transmitting the information related to try-on reservation and the corresponding identity of the commodity the structure shown in Rose (see col.1, lines 53-64 which disclose that the invention can be practiced via interactive TV, Internet, any other electronic medium such as voice or alternatively via a manual system. This implies that the try-on reservation can be made and the information about the scheduled appointment for try-on reservation along with the information identifying which commodity is to be tried on can be transmitted via interactive TV, Internet, telephone or manually). Further, regarding the limitation, "to distinguish the commodity from commodities" is an intended use and since the prior art structure

(Rose/Liebermann/Saigo) is capable of performing the intended use, then it meets the claim.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C. Garg whose telephone number is 571-272-6756. The examiner can normally be reached on M-F(8:30-4:00).

Art Unit: 3625

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yogesh C Garg  
Primary Examiner  
Art Unit 3625

YCG  
1/26/2006